

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0043P

Sales Tax

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer operates a retail store in Indiana and specializes in the sale of audio and video systems for homes. Taxpayer also has several commercial customers and provides installation in homes and automobiles. At audit, it was determined that the taxpayer failed to remit all of its sales tax and had no use tax accrual system in place.

Taxpayer's CPA, in a letter dated December 5, 2001 requests abatement of penalties due to reasonable cause, specifically that the bookkeeper did not tell the owner that the taxes were not filed and paid.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer states that the bookkeeper did not tell the owner that the taxes were not filed and paid. Taxpayer further states that the business is shut down at December 31, 2001.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as

negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the bookkeeper's inability or failure to remit tax does not insulate the taxpayer from the negligence penalty. Taxpayer failed to remit all of the sales tax collected and had no use tax accrual system in place. In this case, taxpayer's failure to remit the tax was not the result of reasonable cause.

FINDING

Taxpayer's protest is denied.